

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

HARVEY B. SEAY, JR.,

Petitioner

VS.

WARDEN DANFORTH,

Respondent

NO. 5:05-CV-333 (CAR)

PROCEEDING UNDER 28 U.S.C. §2254
BEFORE THE U.S. MAGISTRATE JUDGE

ORDER VACATING RECOMMENDATION

Petitioner HARVEY SEAY, JR. has filed a petition seeking federal habeas corpus relief. Tab #1. After reviewing the respondent's MOTION TO DISMISS (Tab #33) and the petitioner SEAY's Response (Tab #39), the undersigned recommended that this case be dismissed as untimely filed pursuant to the Anti-Terrorism and Effective Death Penalty Act (Tab #33). The petitioner objected to the Recommendation (Tab #41) and his objection raised issues that were not present in his response. Since the petitioner is proceeding *pro se*, the court will treat his objection to the recommendation as a supplement to his response and consider both with respect to the respondent's motion to dismiss.

Specifically, the respondent's motion to dismiss alleged that the petitioner pled guilty to the counts for which he is currently incarcerated, but in his objection the petitioner alleges that he was convicted by a jury trial and that he was denied his right to an appeal. The respondent is hereby directed to supplement the docket with the records of the petitioner's trial and appellate proceedings WITHIN THIRTY (30) DAYS from the date of this order.

In light of the uncertainty of the facts surrounding this case, the undersigned's June 23, 2006 Recommendation (Tab #41) is hereby **VACATED**.

SO ORDERED AND DIRECTED, this 13th day of JULY, 2006.



A handwritten signature in blue ink, reading "Claude W. Hicks, Jr.".

CLAUDE W. HICKS, JR.
UNITED STATES MAGISTRATE JUDGE